2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 21A

Title 97

(As Revised 2020)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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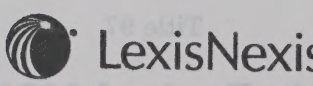

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 97. CRIMES

CHAPTER 17. Crimes Against Property

IN GENERAL

SEC.

97-17-71.3. Unlawful acquisition or use of detached catalytic converter or nonferrous parts thereof; provision of false, fraudulent, altered or counterfeit information by seller of detached catalytic converter or nonferrous part thereof; violation.

CHAPTER 19. False Pretenses and Cheats

SEC.

97-19-87. Intent to defraud or cause deceitful drug or alcohol screening test results prohibited; in-state sale, distri- bution, manufacture or marketing, or transportation into the state of human or synthetic urine prohib- ited; attempt to defeat or interfere with results pro- hibited; possession of adulterants with intent to de- fraud or cause deceitful drug or alcohol screening test prohibited; rebuttable presumption of intent; penalties.

CHAPTER 29. Crimes Against Public Morals and Decency

IN GENERAL

97-29-64. Disclosure of intimate visual material; definitions.

97-29-64.1. Disclosure of intimate visual material; what constitutes offense; defenses; penalties.

CHAPTER 47. Mississippi Unmanned Aircraft Systems Protection Act of 2021

97-47-1. Short title.

97-47-3. Definitions.

97-47-5. Offense of unlawful use of an unmanned aircraft system.

97-47-7. Operation of unmanned aircraft system by law enforcement agency for lawful purpose permitted; operation of unmanned aircraft system by public agency or public contractor permitted under certain circumstances; applicability of chapter.

97-47-9. Penalties.

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TITLE 97.
CRIMES

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Chapter 19.	False Pretenses and Cheats.	97-19-1
Chapter 29.	Crimes Against Public Morals and Decency.	97-29-1
Chapter 35.	Crimes Against Public Peace and Safety.	97-35-1
Chapter 37.	Weapons and Explosives.	97-37-1
Chapter 45.	Computer Crimes and Identity Theft.	97-45-1
Chapter 47.	Mississippi Unmanned Aircraft Systems Protection Act of 2021.	97-47-1

CHAPTER 11.
OFFENSES INVOLVING PUBLIC OFFICIALS

§ 97-11-31. Embezzlement; fraud committed in public office.

Cross References — Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

CHAPTER 17.
CRIMES AGAINST PROPERTY

In General. 97-17-1

IN GENERAL

Sec.

97-17-71. Receiving stolen property; definitions; record keeping requirements for scrap metal dealers and other purchasers; content of records; inspection by law enforcement personnel; hold notice; recovery of metal property by rightful owner; restitution to dealer by unlawful seller; false statement of ownership; cash transactions for purchase of scrap metal prohibited; failure to maintain appropriate records; interstate transportation of metal property; purchase and possession of metal beer kegs and/or metal syrup tanks generally used by soft drink industry prohibited except in limited circumstances; purchases and sales of bronze memorials, utility access covers or metal property identified as belonging to political subdivision, copper telecommunication wire or property identified as belonging to telecommunications company, prohibited except in limited circumstances; purchases of metal property from minors prohibited; limitation on hours of purchase; penalties.

Sec.
97-17-71.1. Registration by scrap metal dealers with office of Secretary of State required; false or misleading statements prohibited penalties for violations; enforcement.
97-17-71.2. Scrap metal dealers prohibited from paying cash for air conditioner evaporator coil or condenser; scrap metal dealers permitted to purchase air conditioner evaporator coil or condenser only from certain contractors or companies; payment for scrap metal to be made by check or money order; penalties for violations.
97-17-71.3. Unlawful acquisition or use of detached catalytic converter or nonferrous parts thereof; provision of false, fraudulent, altered or counterfeit information by seller of detached catalytic converter or nonferrous part thereof; violation.

§ 97-17-7. Arson; third degree; personal property.

JUDICIAL DECISIONS

1. In general.

Defendant's conviction for arson was supported by the evidence because he was the last person known to possess the murder victim's car before it was found "charred completely" and "burned beyond recognition," and he had motive to burn the vehicle because the murder had occurred in the vehicle. McLaughlin v. State, 338 So. 3d 705, 2022 Miss. App. LEXIS 164 (Miss. Ct. App. 2022).

§ 97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.

JUDICIAL DECISIONS

ANALYSIS

2. Sufficiency of evidence.
6. Jury instructions.
7. Sentence.

2. Sufficiency of evidence.

Because the evidence was sufficient to show that defendant aided and abetted his co-defendants in the burglary of the victim's home his motions for a direct verdict and judgment notwithstanding the verdict and his request for a peremptory instruction were properly denied. The State provide overwhelming evidence establishing that defendant planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

Evidence was sufficient to sustain defendant's burglary conviction because a rational trier of fact could have found the "breaking" element was proved beyond a reasonable doubt because testimony showed the door was closed and there was also evidence of a forced entry; the victim testified that he got out of his truck, walked to the door, and opened it, he then saw defendant standing in the doorway with a shotgun pointed at his face, and he also testified he normally locked his door, and denied leaving the door "wide open." McLain v. State, 317 So. 3d 33, 2021 Miss. App. LEXIS 182 (Miss. Ct. App. 2021).

For purposes of defendant's burglary conviction, sufficient evidence supported the finding that defendant's entry into the victim's apartment was unauthorized and no evidence suggested that defendant had an ownership interest in it and that the two had any form of marital relationship outside of an ongoing affair and thus, defendant lacked any implied consent to enter the victim's apartment. Body v. State, 318 So. 3d 1104, 2021 Miss. LEXIS 128 (Miss. 2021).

For purposes of defendant's burglary conviction, sufficient evidence supported the finding that defendant's entry into the victim's apartment was unauthorized and no evidence suggested that defendant had an ownership interest in it and that the two had any form of marital relationship outside of an ongoing affair and thus, defendant lacked any implied consent to enter the victim's apartment. Body v. State, 318 So. 3d 1104, 2021 Miss. LEXIS 128 (Miss. 2021).

6. Jury instructions.

There was no error in the jury instruction because the theory of accessory before the fact was not without foundation and was an issue within the realm for a jury to decide. Although defendant was not physically present at the time of the burglaries, there were several testimonies showing that he aided his co-defendants in the commission of the crimes and thus, sufficient evidence existed to present an accomplice-liability instruction to the jury. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

7. Sentence.

Defendant was not sentenced according to new rules of criminal procedure, and therefore defendant's sentence had to be vacated and remanded for a new sentence in accordance with Miss. Code Ann. § 97-17-23(1). Hughes v. State, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

JUDICIAL DECISIONS

ANALYSIS

6. Evidence, generally.
7. —Of breaking and entering.
11. —Of possession or disposition of stolen property.

6. Evidence, generally.

Considering the evidence in the light most favorable to the State, the appellate court was unable to identify evidence of defendant entering a shed. Therefore, the appellate court found that no rational juror could have found defendant guilty of the crime of burglary of the shed, and it was error for the trial court to deny defendant's motion for judgment notwithstanding the verdict on this charge. Hughes v. State, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

7. —Of breaking and entering.

evidence was sufficient under Miss. Code. Ann. § 97-17-33(1) to sustain defendant's conviction for burglary because the victim testified that the hotel door was closed when she went to sleep, defendant entered the room twice, and the victim testified that defendant tried to insert his fingers into her vaginal area but that he did not fully penetrate her. Garrett v. State, — So. 3d —, 2022 Miss. LEXIS 201 (Miss. Aug. 11, 2022).

Evidence was sufficient to support defendant's conviction of burglary of a dwelling because it showed that the air conditioning unit had been moved, the jewelry kept close to it was missing, defendant admitted to reaching in the window and taking the jewelry, and stolen jewelry was recovered from defendant. Benthall v. State, 311 So. 3d 697, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. 2021).

11. —Of possession or disposition of stolen property.

Defendant was properly convicted of two counts of burglary because there was sufficient circumstantial evidence to convict, including, inter alia, officer testimony that defendant fled carrying a backpack stolen from a car that was later found in the bushes containing materials stolen from a church. Ward v. State, 297 So. 3d 286, 2020 Miss. App. LEXIS 69 (Miss. Ct. App. 2020).

§ 97-17-37. Burglary; with explosives.

JUDICIAL DECISIONS

1. In general.

Petitioner's request for expungement was properly denied because Miss. Code Ann. § 97-3-2, which was passed after he had been sentenced for burglary and which made burglary of a dwelling under the statute a crime of violence, was not a new penalty for an earlier crime, nor did it change petitioner's punishment in any way, so applying § 97-3-2 to petitioner's crime did not constitute an ex post facto law. Watson v. State, 329 So. 3d 1215, 2021 Miss. App. LEXIS 456 (Miss. Ct. App. 2021).

§ 97-17-41. Grand larceny; felonious taking of personal property; felonious taking of property of established place of worship; penalties.

JUDICIAL DECISIONS

14. Evidence.

15. —Sufficiency.

Defendant's grand larceny conviction was error as there was no evidence from which it could be found that the items he stole amounted to the $1,000 threshold for grand larceny under the statute. A video showing defendant carrying a crate with a router valued at only $100 was not big enough to contain the other missing items. Pruitt v. State, 289 So. 3d 1227, 2020 Miss. App. LEXIS 38 (Miss. Ct. App. 2020).

§ 97-17-71. Receiving stolen property; definitions; record keeping requirements for scrap metal dealers and other purchasers; content of records; inspection by law enforcement personnel; hold notice; recovery of metal property by rightful owner; restitution to dealer by unlawful seller; false statement of ownership; cash transactions for purchase of scrap metal prohibited; failure to maintain appropriate records; interstate transportation of metal property; purchase and possession of metal beer kegs and/or metal syrup tanks generally used by soft drink industry prohibited except in limited circumstances; purchases and sales of bronze memorials, utility access covers or metal property identified as belonging to political subdivision, copper telecommunication wire or property identified as belonging to telecommunications company, prohibited except in limited circumstances; purchases of metal property from minors prohibited; limitation on hours of purchase; penalties.

(1) For the purposes of this section, the following terms shall have the meanings ascribed in this section:

(a) "Railroad materials" means any materials, equipment and parts used in the construction, operation, protection and maintenance of a railroad.

(b) "Copper materials" means any copper wire, bars, rods or tubing, including copper wire or cable or coaxial cable of the type used by public utilities, common carriers or communication services providers, whether wireless or wire line, copper air conditioner evaporator coil or condenser, aluminum copper radiators not attached to a motor vehicle, or any combination of these.

(c) "Aluminum materials" means any aluminum cable, bars, rods or tubing of the type used to construct utility, communication or broadcasting towers, aluminum utility wire and aluminum irrigation pipes or tubing. "Aluminum materials" does not include aluminum cans that have served their original economic purpose.

(d) "Dealer-to-dealer transaction(s)" means any transaction of regulated metals, regardless of compensation, between registered scrap metal dealers.

(e) "Law enforcement officer" means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of

criminals and the enforcement of the criminal traffic laws of this state or the ordinances of any political subdivision thereof.

(f) "Metal property" means materials as defined in this section as railroad track materials, copper materials and aluminum materials and electrical, communications or utility brass, metal covers for service access and entrances to sewers and storm drains, metal bridge pilings, irrigation wiring and other metal property attached to or part of center pivots, grain bins, stainless steel sinks, catalytic converters not attached to a motor vehicle and metal beer kegs. Metal property does not include ferrous materials not listed in this section.

(g) "Person" means an individual, partnership, corporation, joint venture, trust, limited liability company, association or any other legal or commercial entity.

(h) "Personal identification card" means any government issued photographic identification card including a valid identification card issued by a federally recognized Indian tribe that contains a color photograph of the card holder and the card holder's legal name, residence address and date of birth.

(i) "Photograph" or "photographically" means a still photographic image, including images captured in digital format, that are of such quality that the persons and objects depicted are clearly identifiable.

(j) "Purchase transaction" means a transaction in which metal property is acquired whether the person acquiring the metal property gives consideration for the metal property or not. For purposes of Sections 97-17-71 through 97-17-71.3, the words "purchase" and "purchased" mean a purchase transaction.

(k) "Purchaser" means a person who acquires metal property, whether the person gives consideration for the metal property or not.

(*l*) "Record" or "records" means a paper, electronic or other method of storing information.

(m) "Registered business entity" means a business entity created by statute, registered and in good standing with its state of incorporation or formation, and having a federal Employer Identification Number (EIN). This term does not include any sole proprietorship, fictitious business name, or nonstatutory general partnership.

(n) "Scrap metal" means any metal property that is acquired by a scrap metal dealer in a purchase transaction.

(o) "Scrap metal dealer" means any person who is engaged, from a fixed location or otherwise, acquiring by purchase transaction, metal property that has served its original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value. Any person who falls under this definition must register as a scrap metal dealer pursuant to Sections 97-17-71 through 97-17-71.3 and its rules.

(2) Every scrap metal dealer or other purchaser shall keep an accurate and legible record in which he shall enter the following information for each purchase transaction:

(a) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;

(i) If a person other than the seller delivers the metal property to the purchaser, the purchaser shall enter the name, address, and age of the person who delivers the metal property, as obtained from the personal identification card of the person delivering the metal property. If the person delivering the metal property is the employee of the scrap metal dealer acting in his official capacity and at the direction of the scrap metal dealer, the purchaser is not required to enter the name, address, and age of the person who delivers the metal property.

(ii) If the seller is a registered business entity, and a person other than the seller delivers the metal property to the purchaser, in addition to the information required by this paragraph (a), the purchaser shall enter the name, principal business address, state of incorporation or formation of the entity, the federal Employer Identification Number (EIN) of the entity, and the name and telephone number of a contact person for the seller;

(b) The date and place of each acquisition of the metal property;

(c) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, acquired in a purchase transaction;

(d) The amount of consideration given in a purchase transaction for the metal property. If no consideration is given, a record of the origin of the regulated metal;

(e) The vehicle license tag number, state of issue and the make and type of the vehicle used to deliver the metal property to the purchaser;

(f) A signed statement from the person receiving consideration in the purchase transaction stating that he or she is the rightful owner of the metal property or is entitled to sell the metal property being sold. Signed statements as required by this section may be collected and recorded on paper, by photographic copy, or other alternative formats as set forth in the rules promulgated by the Secretary of State;

(g) A scanned copy or a photocopy of the personal identification card of the person receiving consideration, or delivering the metal property in the purchase transaction; and

(h) A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

Such records shall be maintained by the scrap metal dealer or purchaser for not less than two (2) years from the date of the purchase transaction, and such records shall be made available to any law enforcement officer or Secretary of State examiner during usual and customary business hours.

(3) The purchaser shall photographically capture the metal property as it exists when it is acquired by the purchaser. The time and date shall be digitally

recorded on the photograph, and the identity of the person taking the photograph shall be recorded. The purchaser shall permit any law enforcement officer or Secretary of State examiner to make an inspection of the metal property, if the metal property is still in the purchaser's possession, and of all photographs of the metal property. Any photograph of metal property taken and maintained pursuant to this subsection shall be admissible in any civil or criminal proceeding.

(4) During the usual and customary business hours of a scrap metal dealer, a law enforcement officer or Secretary of State examiner, after proper identification as a law enforcement officer or Secretary of State examiner, shall have the right to inspect all purchased metal property and all records pertaining to the purchase of regulated metals in the possession of the scrap metal dealer or purchaser.

(5)(a) Whenever a law enforcement officer has reasonable cause to believe that any item of metal property in the possession of a scrap metal dealer has been stolen, a law enforcement officer who has an affidavit from the alleged rightful owner of the property identifying the property with specificity, including any identifying markings, may issue and deliver a written hold notice to the scrap metal dealer. The hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the hold notice. Upon receipt of the notice, the scrap metal dealer may not process or remove the metal property identified in the notice from the place of business of the scrap metal dealer for fifteen (15) calendar days after receipt of the notice, unless sooner released by a law enforcement officer.

(b) No later than the expiration of the fifteen-day period, a law enforcement officer, after receiving additional substantive evidence beyond the initial affidavit, may issue and deliver a second written hold notice, which shall be an extended hold notice. The extended hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the extended hold notice. Upon receipt of the extended hold notice, the scrap metal dealer may not process or remove the items of metal property identified in the notice from the place of business of the scrap metal dealer for fifteen (15) calendar days after receipt of the extended hold notice, unless sooner released by a law enforcement officer.

(c) At the expiration of the hold period or, if extended in accordance with this subsection, at the expiration of the extended hold period, the hold is automatically released, then the scrap metal dealer may dispose of the metal property unless other disposition has been ordered by a court of competent jurisdiction.

(d) If the scrap metal dealer contests the identification or ownership of the metal property, the party other than the scrap metal dealer claiming ownership of any metal property in the possession of a scrap metal dealer, provided that a timely report of the theft of the metal property was made to the proper authorities, may bring a civil action in the circuit court of the county in which the scrap metal dealer or purchaser is located. The petition

for the action shall include the means of identification of the metal property utilized by the petitioner to determine ownership of the metal property in the possession of the scrap metal dealer.

(e) When a lawful owner recovers stolen metal property from a scrap metal dealer who has complied with this section, and the person who sold the metal property to the scrap metal dealer is convicted of a violation of this section, or theft by receiving stolen property under Section 97-17-70, the court shall order the convicted person to make full restitution to the scrap metal dealer, including, without limitation, attorney's fees, court costs and other expenses.

(6) For dealer-to-dealer transactions, records required to be kept include:

(a) Name and address of selling dealer;

(b) Date and place of each acquisition of the metal property;

(c) The weight, quantity, or volume and a general description of the type of metal property; and

(d) The amount or type of consideration given for the metal property by the purchasing dealer.

Such records shall be maintained by the scrap metal dealer for not less than two (2) years from the date of the purchase transaction, and such records shall be made available to any law enforcement officer or Secretary of State examiner during usual and customary business hours.

(7) It shall be unlawful for any person to give a false statement of ownership or to give a false or altered identification or vehicle tag number and receive money or other consideration from a scrap metal dealer or other purchaser in return for metal property.

(8) A scrap metal dealer or other purchaser shall not enter into any cash transactions in payment for the purchase of metal property. Payment shall be made by check issued to the seller of the metal property or by electronic funds transfer.

(9) If a person acquiring metal property fails to maintain the records or to hold such materials as requested by a law enforcement officer under Sections 97-17-71 through 97-17-71.3, such failure shall be prima facie evidence that the person receiving the metal property received it knowing it to be stolen in violation of Section 97-17-70.

(10) It shall be unlawful for any person to transport or cause to be transported for himself or another from any point within this state to any point outside this state any metal property, unless the person or entity first reports to the sheriff of the county from which he departs this state transporting such materials the same information that a purchaser in this state would be required to obtain and keep in a record as set forth in subsection (2) of this section. In such a case the sheriff receiving the report shall keep the information in records maintained in his office as a public record available for inspection by any person at all reasonable times. This section shall not apply to a public utility, as that term is defined in Section 77-3-3, engaged in carrying on utility operations; to a railroad, as that term is defined in Section 77-9-5; to a communications service provider, whether wireless or wire line; or to a scrap metal dealer.

(11) It shall be unlawful for a scrap metal dealer or other purchaser to knowingly purchase or possess a metal beer keg, or a metal syrup tank generally used by the soft drink industry, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal. However, it shall not be unlawful to purchase or possess a metal syrup tank generally used by the soft drink industry if the scrap metal dealer or other purchaser obtains a bill of sale at the time of purchase from a seller if the seller is a manufacturer of such tanks, a soft drink company or a soft drink distributor.

(12) It shall be unlawful to sell to a scrap metal dealer any bronze vase and/or marker, memorial, statue, plaque, or other bronze object used at a cemetery or other location where deceased persons are interred or memorialized, or for any such dealer to purchase those objects, unless the source of the bronze is known and notice is provided to the municipal or county law enforcement agency where the dealer is located. The notice shall identify all names, letters, dates and symbols on the bronze and a photograph of the bronze shall be attached thereto. Written permission from the cemetery and the appropriate law enforcement agency must be received before any type of bronze described in this subsection may be purchased, processed, sold or melted.

(13)(a) It shall be unlawful for any scrap metal dealer to purchase any manhole cover and other similar types of utility access covers, including storm drain covers, or any metal property clearly identified as belonging to a political subdivision of the state or a municipality, unless that metal property is purchased from the political subdivision, the municipal utility or the manufacturer of the metal. Any purchaser who purchases metal property in bulk shall be allowed twenty-four (24) hours to determine if any metal property prohibited by this subsection is included in a bulk purchase. If such prohibited metal property is included in a bulk purchase, the purchaser shall notify law enforcement no later than twenty-four (24) hours after the purchase.

(b) It shall be unlawful for a person to sell, or any scrap metal dealer to purchase, any copper telecommunication wire in any form or any metal property clearly identified as belonging to a telecommunications company, unless that metal property is purchased from (i) an electrician or contractor to whom either a license has been issued by a municipality or county in this state or a current certificate of responsibility has been issued by the State Board of Public Contractors; or (ii) a person who holds a demolition permit issued by a municipality or county in this state. It shall be unlawful for a person to sell, or a scrap metal dealer to purchase, copper telecommunication wire that has been burned to remove the insulation, unless the seller provides certification, on a form as issued by the Secretary of State and signed by a firefighter who is currently in compliance with the certification requirements of the Mississippi Fire Personnel Minimum Standards and

Certification Board or a certified law enforcement officer, that the source of the copper telecommunication wire was from a building destroyed by fire.

(14) It shall be unlawful for a scrap metal dealer or other purchaser to purchase metal property from a person younger than eighteen (18) years of age.

(15) Metal property may not be purchased, acquired or collected between the hours of 9:00 p.m. and 6:00 a.m.

(16) Except as provided in this subsection, any person willfully or knowingly violating the provisions of Sections 97-17-71 through 97-17-71.3 shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) per offense, unless the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft of or removal of the metal property, including replacement costs of the metal property, are in aggregate an amount which exceeds One Thousand Dollars ($1,000.00) but less than Five Thousand Dollars ($5,000.00), in which case the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed five (5) years, fined not more than Ten Thousand Dollars ($10,000.00), or both. Any person found guilty of stealing metal property or receiving metal property, knowing it to be stolen in violation of Section 97-17-70, shall be ordered to make full restitution to the victim, including, without limitation, restitution for property damage that resulted from the theft of the property.

(17) If the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft of or removal of the metal property, including replacement costs of the metal property, are in aggregate an amount which exceeds Five Thousand Dollars ($5,000.00) but less than Twenty-five Thousand Dollars ($25,000.00), the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not less than one (1) year, but not to exceed ten (10) years, fined not more than Fifteen Thousand Dollars ($15,000.00), or both.

(18) If the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft of or removal of the metal property, including replacement costs of the metal property, are in aggregate an amount which exceeds Twenty-five Thousand Dollars ($25,000.00), the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not less than three (3) years, but not to exceed twenty (20) years, fined not more than Twenty Thousand Dollars ($20,000.00), or both.

(19) This section shall not be construed to repeal other criminal laws. Whenever conduct proscribed by any provision of this section is also proscribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

(20) This section shall apply to all businesses regulated under this section without regard to the location within the State of Mississippi.

(21) Sections 97-17-71 through 97-17-71.3 shall take precedence over any and all local ordinances governing purchase transactions of metal property. If any municipal or county ordinance, rule or regulation conflicts with the provisions of Sections 97-17-71 through 97-17-71.3, the provisions of Sections 97-17-71 through 97-17-71.3 shall preempt the municipal or county ordinance, rule or regulation.

(22) This section shall be fully applicable to the requirements for the purchase and sale of detached catalytic converters provided in Section 97-17-71.3, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 2249.5; Laws, 1966, ch. 390, §§ 1-3, 1971, ch. 474, §§ 1-5; Laws, 1989, ch. 578, § 1; Laws, 1993, ch. 359, § 2; Laws, 2008, 1st Ex Sess, ch. 29, § 1; Laws, 2012, ch. 536, § 1; Laws, 2014, ch. 457, § 23, eff from and after July 1, 2014; Laws, 2021, ch. 378, § 14, eff from and after July 1, 2021; Laws, 2022, ch. 452, § 1, eff from and after July 1, 2022.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (10) by inserting the word "or" preceding "to a scrap metal dealer" and deleting "; or to a person identified in subsection (6) as being exempt from the provisions of this section" thereafter. The Joint Committee ratified the change at its August 10, 2022, meeting.

Amendment Notes — The 2021 amendment added "including a valid identification card...residence address and date of birth" at the end of (1)(g).

The 2022 amendment rewrote the section.

§ 97-17-71.1. Registration by scrap metal dealers with office of Secretary of State required; false or misleading statements prohibited penalties for violations; enforcement.

(1)(a) From and after August 7, 2008, it shall be unlawful for any scrap metal dealer or any person who purchases scrap metal, deals in scrap metal, or otherwise engages in the scrap metal business to fail to register with the Secretary of State. All registrations under this section shall expire two (2) years from the date of the registration or the renewal thereof.

(b) The Secretary of State may promulgate and adopt such rules and regulations as are reasonably necessary to carry out the provisions of this section and establish such registration and renewal fees as are adequate to cover the administrative costs associated with the registration program.

(c) The Secretary of State may deny, suspend, revoke or refuse to renew any registration following notice to the applicant or registrant in accordance with the promulgated rules and an opportunity for a hearing for any failure to comply with this section, or for other good cause.

(2) A violation of this section is a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) but not to exceed One Thousand

Dollars ($1,000.00) for the first offense. Any person who shall be guilty of any subsequent violations of this section requiring registration shall be guilty of a felony offense and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed three (3) years, fined not more than Five Thousand Dollars ($5,000.00), or both.

(3)(a) To register or renew registration, the registrant must declare, under penalty of perjury, whether such registrant has ever been convicted of any felony offense, or any misdemeanor offense involving fraud, dishonesty, or deceit within five (5) years preceding the date of application. If the registrant is a business entity, the registrant shall make the same declarations on behalf of every owner of the business who participates in the operation or management of the business.

(b)(i) An applicant who has been convicted of an offense as described in paragraph (a) of this subsection may be prohibited from registering under this section for five (5) years from the date of conviction.

(ii) Any false statement submitted to the Secretary of State for the purpose of unlawfully registering under this section shall be punished as perjury in the manner provided in Section 97-9-61, and a person so convicted shall be disqualified for life from registering as a scrap metal dealer under this section.

(4) The Secretary of State shall immediately report any suspected criminal violation accompanied by all relevant records to the Office of Attorney General and the appropriate district attorney for further proceedings.

(5) It is unlawful for a person to make or cause to be made, in a record or statement that is used or obtained in an examination, action, proceeding, or filed under this section, a statement that, at the time and in light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading.

(6) The Secretary of State shall have the authority to:

(a) Conduct and carry out criminal background history verification of the information provided by the applicant or registrant and to require the submission of information and forms from the applicant or registrant in order to accomplish the registration duties imposed by this section;

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted;

(c) Issue a cease and desist order, with a prior hearing, against the scrap metal dealer or other purchaser alleged to be in violation of this section, directing the person or persons to cease and desist from further illegal activity. When an immediate cease and desist order is issued, the Secretary of State shall hold an administrative hearing on the alleged violations within fifteen (15) business days;

(d)(i) Issue an order against any scrap metal dealer or other purchaser for any violation of this section, imposing an administrative penalty up to

a maximum of One Thousand Dollars ($1,000.00) for each offense. Each violation shall be considered a separate offense in a single proceeding or a series of related proceedings. Any administrative penalty, plus reimbursement for all costs and expenses incurred in the investigation of the violation and any administrative proceedings, shall be paid to the Secretary of State;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (c)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this section or any rule or order hereunder; the number of persons adversely affected by the conduct; and the resources of the person committing the violation;

(e) Bring an action in chancery court to enjoin the acts or practices complained of to enforce compliance with this section or any rule promulgated or order entered hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this section or any rule or order hereunder, or the court may impose a civil penalty up to a maximum of One Thousand Dollars ($1,000.00) for each offense, provided that each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State to post a bond.

(7) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

HISTORY: Laws, 2008, 1st Ex Sess, ch. 29, § 2; Laws, 2016, ch. 447, § 3, eff from and after July 1, 2016; Laws, 2022, ch. 452, § 2, eff from and after July 1, 2022.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "this chapter" to "this section" in subsection (5). The Joint Committee ratified the change at its August 10, 2022, meeting.

Amendment Notes — The 2022 amendment, in (3)(a), substituted "convicted of any felony offense...within five (5) years preceding the date of application" for "convicted of a violation of Section 97-17-71...as defined in Section 97-17-71," and added the last sentence; in (3)(b)(i), substituted "convicted of an offense as described in paragraph (a) of this subsection may be prohibited" for "convicted of a violation of Section 97-17-71...involved

metal property, shall be prohibited"; added (5); redesignated former (5) as (6), and therein, added (b), redesignated former (b) as (c) and therein added the last sentence, and redesignated former (c) and (d) as (d) and (e); and redesignated former (6) as (7).

§ 97-17-71.2. Scrap metal dealers prohibited from paying cash for air conditioner evaporator coil or condenser; scrap metal dealers permitted to purchase air conditioner evaporator coil or condenser only from certain contractors or companies; payment for scrap metal to be made by check or money order; penalties for violations.

(1) It is an offense for a scrap metal dealer to pay cash to a person who presents an air conditioner evaporator coil or condenser, in whole or in part, for sale as scrap.

(2) Scrap metal described in subsection (1) may only be sold for scrap by an authorized agent, representative or employee of one (1) of the following:

(a) A licensed HVAC contractor who acquired the evaporator coil or condenser in the performance as a contractor as defined in Section 31-3-1;

(b) A company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers;

(c) Where the jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding a privilege license indicating the business as that of an HVAC installer or repairer; or

(d) A company holding a privilege license indicating the business as that of an HVAC installer or repairer.

(3) The person offering an air conditioner evaporator coil or condenser for sale as scrap on behalf of a company listed in subsection (2) shall have in the person's possession documentation that the company for whom it is being sold is a company described in subsection (2), and that the person selling the evaporator coil or condenser is an authorized agent, representative or employee of that company.

(4) Payment for scrap metal described in subsection (1) must be made by check or money order, and the name of the company or the individual meeting the requirements of subsection (2) of this section must be the payee on the check.

(5)(a) A violation of this section is a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00) per offense.

(b) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any other applicable criminal offense.

(6) Any purchase of any air conditioner evaporator coil or condenser, as described in this section, in whole or in part, is subject to the record keeping requirements required by Section 97-17-71.

HISTORY: Laws, 2008, 1st Ex Sess, ch. 29, § 3, eff 60 days after passage (approved June 9, 2008); Laws, 2022, ch. 452, § 3, eff from and after July 1, 2022.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (6) by substituting "Section 97-17-71" for "this section." The Joint Committee ratified the change at its August 10, 2022, meeting.

Amendment Notes — The 2022 amendment, in (1), deleted "or other purchaser" following "dealer," and deleted "or for such dealer to make payment of any kind at the time of the transaction" from the end; and in (4), deleted "mailed to the business address of the company for whom the metal is being sold" following "money order," and inserted "or the individual meeting the requirements of subsection (2) of this section); and added (6).

§ 97-17-71.3. Unlawful acquisition or use of detached catalytic converter or nonferrous parts thereof; provision of false, fraudulent, altered or counterfeit information by seller of detached catalytic converter or nonferrous part thereof; violation.

(1) It is unlawful for any person to purchase or otherwise acquire, a used, detached catalytic converter, or any nonferrous part thereof, unless all of the following apply:

(a) The purchaser is registered as a scrap metal dealer under Section 97-17-71;

(b) The sale, transfer, purchase or acquisition occurs at the fixed business address of a scrap metal dealer that is a party to the transaction. For purposes of this subsection, the fixed business address of the scrap metal dealer is the address of the business that is registered pursuant to Section 97-17-71;

(c) The purchaser has maintained all of the information required under Section 97-17-71;

(d) One or more of the following apply:

(i) The used, detached catalytic converter or nonferrous part thereof was obtained by the seller thereof as part of a vehicle;

(ii) The catalytic converter or nonferrous part thereof was purchased in a dealer-to-dealer transaction or from any of the following bona fide entities: a new or used motor vehicle dealer, an automotive repair service, a motor vehicle manufacturer, a vehicle demolisher or a distributor of catalytic converters; or

(iii) The seller of the catalytic converter or nonferrous part thereof provides the purchaser with all of the following information for the motor vehicle from which the catalytic converter or part thereof was taken:

1. The name of the person who removed the catalytic converter;

2. The name of the person for whom the removal was completed;

3. The make and model of the vehicle from which the catalytic converter was removed;

4. The vehicle identification number of the vehicle from which the catalytic converter was removed; and

5. A copy of the driver's license or nondriver identification card of the seller of the catalytic converter;

(e) Before each purchase or acquisition of a used, detached catalytic converter or part thereof, the scrap metal dealer, including an agent, employee, or representative thereof, shall retain the necessary records and information to comply with Sections 97-17-71 through 97-17-71.3.

(2) It is unlawful for a seller of a used, detached catalytic converter, or any nonferrous part of a catalytic converter, to provide any false, fraudulent, altered or counterfeit information or documentation as required by this section.

(3) Each catalytic converter that is purchased, possessed, obtained, transported or otherwise acquired in violation of this section is a separate violation of this section.

(4) A person who violates this section is guilty of a misdemeanor or a felony for subsequent violations as specifically prescribed under Sections 97-17-71 and 97-17-71.1, Mississippi Code of 1972.

(5) For purposes of this section, a used, detached catalytic converter does not include a catalytic converter that has been tested, certified and labeled for reuse in accordance with applicable U.S. Environmental Protection Agency Clean Air Act regulations.

HISTORY: Laws, 2022, ch. 452, § 4, eff from and after July 1, 2022.

CHAPTER 19.

FALSE PRETENSES AND CHEATS

Sec.

97-19-85. Fraudulent use of identity, Social Security number, credit card or debit card number or other identifying information to obtain thing of value.

97-19-87. Intent to defraud or cause deceitful drug or alcohol screening test results prohibited; in-state sale, distribution, manufacture or marketing, or transportation into the state of human or synthetic urine prohibited; attempt to defeat or interfere with results prohibited; possession of adulterants with intent to defraud or cause deceitful drug or alcohol screening test prohibited; rebuttable presumption of intent; penalties.

§ 97-19-85. Fraudulent use of identity, Social Security number, credit card or debit card number or other identifying information to obtain thing of value.

(1) Any person who shall make or cause to be made any false statement or representation as to his or another person's or entity's identity, social security account number, credit card number, debit card number, DD-214 or other identifying information for the purpose of fraudulently obtaining or with the intent to obtain goods, services or any thing of value, shall be guilty of a felony and, upon conviction thereof, for a first offense shall be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned for a term not to exceed five (5) years, or both. For a second or subsequent offense such person, upon conviction, shall be fined not more than Ten Thousand Dollars ($10,000.00) or imprisoned for a term not to exceed ten (10) years, or both. In addition to the

fines and imprisonment provided in this section, a person convicted under this section shall be ordered to pay restitution as provided in Section 99-37-1 et seq.

(2) A person is guilty of fraud under subsection (1) who:

(a) Shall furnish false information willfully, knowingly and with intent to deceive anyone as to his true identity or the true identity of another person; or

(b) Willfully, knowingly, and with intent to deceive, uses a social security account number to establish and maintain business or other records; or

(c) With intent to deceive, falsely represents a number to be the social security account number assigned to him or another person, when in fact the number is not the social security account number assigned to him or such other person; or

(d) With intent to deceive, falsely represents to be a representative of an entity in order to open banking accounts, obtain credit cards, or other services and supplies in the entity's name; or

(e) Knowingly alters a social security card, buys or sells a social security card or counterfeit or altered social security card, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(f) Willfully and knowingly, with intent to deceive, falsely uses a form DD-214, Military Retiree Identification Card, United States Department of Veterans Affairs Medical Identification Card, United States Department of Veterans Affairs Identification Card or National Guard Form NGB 22, for the purpose of fraudulently obtaining a veterans driver's license or any other state or federal government benefit available only to honorably discharged veterans.

HISTORY: Laws, 1993, ch. 387, § 1; Laws, 1998, ch. 555, § 1; Laws, 2009, ch. 391, § 1; brought forward without change, Laws, 2014, ch. 457, § 76, eff from and after July 1, 2014; Laws, 2021, ch. 416, § 2, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), inserted "DD-214," and made minor punctuation changes; and added (2)(f) and made a related change.

Cross References — Veteran driver's license, see § 63-1-35.

§ 97-19-87. Intent to defraud or cause deceitful drug or alcohol screening test results prohibited; in-state sale, distribution, manufacture or marketing, or transportation into the state of human or synthetic urine prohibited; attempt to defeat or interfere with results prohibited; possession of adulterants with intent to defraud or cause deceitful drug or alcohol screening test prohibited; rebuttable presumption of intent; penalties.

(1) As used in this section, "adulterant" means a substance that is not expected to be in human urine or another human bodily fluid or a substance expected to be present in human urine or another human bodily fluid but that is at a concentration so high that it is not consistent with human urine or another human bodily fluid, including, without limitation:

(a) Bleach;
(b) Chromium;
(c) Creatinine;
(d) Detergent;
(e) Glutaraldehyde;
(f) Glutaraldehyde/squalene;
(g) Hydrochloric acid;
(h) Hydroiodic acid;
(i) Iodine;
(j) Nitrite;
(k) Peroxidase;
(*l*) Potassium dichromate;
(m) Potassium nitrite;
(n) Pyridinium chlorochromate; and
(o) Sodium nitrite.

(2) It is unlawful for a person to:

(a) Sell, give away, distribute, manufacture or market human or synthetic urine in this state or transport human or synthetic urine into this state with the intent of using the human or synthetic urine to defraud or cause deceitful results in a drug or alcohol screening test;

(b) Attempt to defeat or interfere with the results of a drug or alcohol screening test by substituting synthetic urine or substituting or spiking a human urine sample or by advertising urine sample substitution or human urine spiking devices or measures;

(c) Possess adulterants with intent to use such a substance to adulterate a human urine sample or other human bodily fluid sample with intent to defraud or cause deceitful results in a drug or alcohol screening test; or

(d) Sell or market an adulterant with the intent by the seller or marketer that the product be used to adulterate a human urine sample or other human bodily fluid sample for the purpose of defrauding or causing deceitful results in a drug or alcohol screening test.

(3) There shall be a rebuttable presumption of intent to defraud or obtain deceitful results in a drug or alcohol screening test if:

(a) A heating element or any other device used to thwart a drug screening test accompanies the sale, giving, distribution, manufacture or marketing of human or synthetic urine; or

(b) Instructions that provide a method for thwarting a drug screening test accompany the sale, giving, distribution, manufacture or marketing of human or synthetic urine.

(4)(a) Upon a first conviction, a person who violates this section is guilty of a misdemeanor and shall be subject to a fine of One Thousand Dollars ($1,000.00), imprisonment in the county jail not to exceed six (6) months, or both.

(b) Upon a second conviction, a person who violates this section is guilty of a misdemeanor and shall be subject to a fine of Two Thousand Dollars ($2,000.00), imprisonment in the county jail not to exceed one (1) year, or both.

(c) Upon a third or subsequent conviction, a person who violates this section is guilty of a felony and shall be subject to a fine not to exceed Five Thousand Dollars ($5,000.00), imprisonment in the custody of the Department of Corrections not to exceed three (3) years, or both.

(5) Nothing in this section shall be construed to encourage, conflict, or otherwise interfere with the preemption of state and local laws under federal laws or United States Department of Transportation regulations related to drug testing procedures and confidentiality.

HISTORY: Laws, 2021, ch. 433, § 1, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

CHAPTER 21.

FORGERY AND COUNTERFEITING

ARTICLE 1.

GENERAL PROVISIONS.

§ 97-21-57. Trade-marks; sale of goods bearing counterfeit stamp or label.

JUDICIAL DECISIONS

1. Evidence sufficient.

Evidence was sufficient to support defendant's conviction under this section because we find the State showed that defendant, the store owner, constructively possessed the counterfeit purses and wallets seized from the store, the investigator testified that several of the counterfeit items were clearly displayed for sale in the store and that one item was even located in a clear case next to the cash register, and the investigator testified that the aggregate retail value of the purses and wallets, if not forged or counterfeited, amounted to about $5,426. Murshid v. State, 326 So. 3d 489, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. 2021), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 318 (Miss. 2021), cert. denied, — U.S. —, 142 S. Ct. 1172, 212 L. Ed. 2d 42, 2022 U.S. LEXIS 922 (U.S. 2022).

§ 97-21-59. Uttering counterfeit instrument or coin.

JUDICIAL DECISIONS

4. Instructions.

In a case in which defendant was found guilty of uttering a forgery, the appellate court found that the jury was adequately instructed as to the required elements of uttering a forgery. Therefore, the trial court did not abuse its discretion in refusing defendant's mistake-of-fact jury instruction. Clay v. State, — So. 3d —, 2022 Miss. App. LEXIS 267 (Miss. Ct. App. Aug. 16, 2022).

CHAPTER 23.

OFFENSES AFFECTING TRADE, BUSINESS AND PROFESSIONS

§ 97-23-19. Embezzlement; by agents, bailees, trustees, servants and persons generally.

JUDICIAL DECISIONS

ANALYSIS

5. Proof.
7. Sentencing.

5. Proof.

State of Mississippi presented sufficient evidence to find defendant guilty of embezzling over time an amount in excess of $25,000 because the evidence and testimony showed that defendant wrongfully converted the funds of defendant's employer to defendant's own use, that the funds were entrusted to defendant by the nature of defendant's position at the employer, and that defendant's employer paid the amount of the express checks that were issued and cashed by defendant as a result of defendant's false repair orders for the employer's trucks. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021), cert. denied, 321 So. 3d 564, 2021 Miss. LEXIS 205 (Miss. 2021).

7. Sentencing.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021), cert. denied, 321 So. 3d 564, 2021 Miss. LEXIS 205 (Miss. 2021).

§ 97-23-89. Sale, distribution of recordings without display of required information.

JUDICIAL DECISIONS

2. Sufficient evidence.

Evidence was sufficient to support defendant's conviction under this section because the investigator testified that when he entered defendant's store he observed in plain sight several CDs and/or DVDs for sale, and in addition to noticeable issues associated with the recordings' packaging and artwork, the investigator explained that he identified the recordings as counterfeit because they failed to display the manufacturer's actual name and street address as required. Murshid v. State, 326 So. 3d 489, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. 2021), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 318 (Miss. 2021), cert. denied, — U.S. —, 142 S. Ct. 1172, 212 L. Ed. 2d 42, 2022 U.S. LEXIS 922 (U.S. 2022).

CHAPTER 29.

CRIMES AGAINST PUBLIC MORALS AND DECENCY

In General. 97-29-1

IN GENERAL

Sec.
97-29-51. Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties.
97-29-61. Voyeurism; trespass by "peeping Tom"; when victim is adult; when victim is child under sixteen.
97-29-64. Disclosure of intimate visual material; definitions.
97-29-64.1. Disclosure of intimate visual material; what constitutes offense; defenses; penalties.

§ 97-29-51. Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties.

(1)(a) A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

(b) Upon conviction under this subsection, a person shall be punished by a fine not exceeding Two Hundred Dollars ($200.00) or by confinement in the county jail for not more than six (6) months, or both. A second or subsequent violation of this section shall be a felony, punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or both.

(c) However, in all cases, if the person whose services are procured in violation of this subsection (1) is a minor under eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both.

(d) Consent of a minor is not a defense to prosecution under this subsection (1).

(2)(a) A person commits the felony of promoting prostitution if the person:

(i) Knowingly or intentionally entices, compels, causes, induces, persuades, or encourages by promise, threat, violence, or by scheme or device, another person to become a prostitute, engage in conduct in violation of

Section 97-29-49, regardless of whether the other person can be or is arrested for, charged with or convicted of the offense of prostitution;

(ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;

(iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;

(iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;

(v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or

(vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

(b) Upon conviction, a person shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00) or by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, or both. A second or subsequent violation shall be punished by a fine not exceeding Twenty Thousand Dollars ($20,000.00) or by imprisonment in the custody of the Department of Corrections for up to twenty (20) years, or both.

(c) However, in all cases, if the person whose services are promoted in violation of this subsection (2) is a minor under eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both. There is no requirement that the defendant have actual knowledge of the age of the person and consent of a minor is not a defense to prosecution under this section.

(3) If it is determined that a person suspected of or charged with promoting prostitution is a trafficked person, as defined by Section 97-3-54.4, that fact shall be considered a mitigating factor in any prosecution of that person for prostitution, and the person shall be referred to appropriate resources for assistance. If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97-3-54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97-3-54.1(4) shall be applicable.

(4) Any partnership, association, corporation or other entity violating any provision of subsection (2) against the promotion of prostitution shall, upon

conviction, be punished by a fine not exceeding Fifty Thousand Dollars ($50,000.00). If the person whose services are promoted is under eighteen (18) years of age, the partnership, association, corporation or other legal entity convicted shall be punished by a fine not exceeding One Million Dollars ($1,000,000.00). There is no requirement that the defendant have knowledge of the age of the person. Consent of a minor is not a defense to prosecution under this section.

(5) Investigation and prosecution of a person, partnership, association, corporation or other entity under this section shall not preclude investigation or prosecution against that person, partnership, association, corporation or other entity for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97-3-54 et seq.

HISTORY: Codes, 1942, § 2334; Laws, 1942, ch. 284; Laws, 2013, ch. 543, § 11, eff from and after July 1, 2013; Laws, 2022, ch. 427, § 6, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2)(a)(i), added "engage in conduct-...convicted of the offense of prostitution."

§ 97-29-61. Voyeurism; trespass by "peeping Tom"; when victim is adult; when victim is child under sixteen.

(1)(a) Any person who enters upon real property, whether the original entry is legal or not, and thereafter pries or peeps through a window or other opening in a dwelling or other building structure for the lewd, licentious and indecent purpose of spying upon the occupants thereof, shall be guilty of a felonious trespass.

(b) Any person who looks through a window, hole or opening, or otherwise views by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, drones, camera, motion-picture camera, camcorder or mobile phone, into the interior of a bedroom, bathroom, changing room, fitting room, dressing room, spa, massage room or therapy room or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside and without the consent or knowledge of every person present, for the lewd, licentious and indecent purpose of spying upon the occupant or occupants thereof, shall be guilty of a felony.

(2)(a) Except as provided in paragraph (b) of this subsection, a person who is over the age of eighteen (18) at the time of the offense and is convicted of a violation of subsection (1) of this section shall be imprisoned in the custody of the Department of Corrections not more than five (5) years.

(b) When one or more occupants spied upon is a child under sixteen (16) years of age, a person who was over the age of twenty-one (21) at the time of the offense who is convicted of a violation of subsection (1) of this section shall be imprisoned in the custody of the Department of Corrections not more than ten (10) years.

HISTORY: Codes, 1942, § 2412.5; Laws, 1958, ch. 281; Laws, 1980, ch. 391; Laws, 2012, ch. 557, § 1; Laws, 2015, ch. 489, § 1, eff from and after July 1, 2015; Laws, 2022, ch. 423, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2)(a), substituted "person who is over the age of eighteen (18) at the time of the offense and is convicted" for "person who was over the age of twenty-one (21) at the time of the offense who is convicted."

JUDICIAL DECISIONS

1. In general.

Defense attorney's failure to object to the indictment did not constitute ineffective assistance of counsel because the statute did not require that the person be a "male"; the indictment properly tracked the language of the statute, included the essential elements of voyeurism, and sufficiently informed defendant of the charges against him. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

§ 97-29-64. Disclosure of intimate visual material; definitions.

As used in this section and Section 97-29-64.1:

(a) "Intimate parts" means the naked genitals, pubic area, anus, buttocks or female nipple of a person.

(b) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to promote.

(c) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation or sadomasochistic abuse.

(d) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the genitals, buttocks or female nipple.

(e) "Visual material" means:

(i) Any film, photograph, videotape, negative or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative or slide; or

(ii) Any disk, diskette or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

HISTORY: Laws, 2021, ch. 462, § 1, eff from and after July 1, 2021.

§ 97-29-64.1. Disclosure of intimate visual material; what constitutes offense; defenses; penalties.

(1) A person commits an offense if:

(a) Without the effective consent of the depicted person and with the intent to harm the depicted person, the offender discloses visual material

depicting another person with the depicted person's intimate parts exposed or engaged in sexual conduct;

(b) At the time of the disclosure, the offender knows or has reason to believe that the visual material was obtained by the offender or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;

(c) The disclosure of the visual material causes harm to the depicted person; and

(d) The disclosure of the visual material reveals the identity of the depicted person in any manner, including through:

(i) Any accompanying or subsequent information or material related to the visual material; or

(ii) Information or material provided by a third party in response to the disclosure of the visual material.

(2) A person commits an offense if the offender intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the depicted person's intimate parts exposed or engaged in sexual conduct and the offender makes the threat to obtain a benefit:

(a) In return for not making the disclosure; or

(b) In connection with the threatened disclosure.

(3) A person commits an offense if, knowing the character and content of the visual material, the offender promotes visual material described by subsection (1) of this section on an internet website or other forum for publication that is owned or operated by the offender.

(4) It is not a defense to prosecution under this section that the depicted person:

(a) Created or consented to the creation of the visual material; or

(b) Voluntarily transmitted the visual material to the actor.

(5) It is an affirmative defense to prosecution under subsection (1) or (3) of this section that:

(a) The disclosure or promotion is made in the course of:

(i) Lawful and common practices of law enforcement or medical treatment;

(ii) Reporting unlawful activity; or

(iii) A legal proceeding, if the disclosure or promotion is permitted or required by law; or

(b) The disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of:

(i) The person's intimate parts; or

(ii) The person engaging in sexual conduct.

(6) Where content is provided by another person or entity, nothing in this section shall be construed to impose criminal liability on the following:

(a) An internet service provider;

(b) an interactive computer service, as defined in 47 USC Section 230;

(c) A provider of an electronic communications service, as defined in 18 USC Section 2510;

(d) A telecommunications service, information service or mobile service, as defined in 47 USC Section 153, including a commercial mobile service, as defined in 47 USC Section 332(d); or

(e) A cable operator, as defined in 47 USC Section 522.

(7)(a) A first offense under this section is a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

(b) A second or subsequent violation of this section is a felony and, upon conviction, shall be punished by imprisonment not exceeding one (1) year or by a fine not exceeding Two Thousand Dollars ($2,000.00), or both.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, any offense under this section committed for financial profit shall constitute a felony and, upon conviction, shall be punished by imprisonment not exceeding one (1) year or by fine not exceeding Two Thousand Dollars ($2,000.00), or both.

(8) A person shall be subject to prosecution in this state for any conduct made unlawful by this section which the person engages in while:

(a) Either within or outside of this state if, by such conduct, the person commits a violation of this section which involves an individual who resides in this state; or

(b) Within this state if, by such conduct, the person commits a violation of this section which involves an individual who resides within or outside this state.

(9) The provisions of this section are supplementary to the provisions of any other statute of this state. If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

HISTORY: Laws, 2021, ch. 462, § 2, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

CHAPTER 33.

GAMBLING AND LOTTERIES

IN GENERAL

§ 97-33-1. Betting, gaming or wagering; exception from prohibition; penalty.

JUDICIAL DECISIONS

6. Site proposal.

Denial of a gaming site application was proper after the Mississippi Gaming Commission (MGC) found that applicant's pro-

posed gaming site failed to meet the governing statutory and regulatory requirements under Miss. Code Ann. § 97-33-1 (Rev. 2014) in the first instance and 13 Mississippi Administrative Code Part 2, Rule 1.4(d) in the second. RW Dev., LLC v. Miss. Gaming Comm'n, 307 So. 3d 404, 2020 Miss. LEXIS 485 (Miss. 2020).

§ 97-33-8. Illegal gambling; Internet sweepstakes cafes prohibited.

JUDICIAL DECISIONS

1. Jury instructions.

Instruction stating that poker and keno were gambling games and could only be offered on the premises of a licensed gaming establishment fairly stated the applicable law and thus, created no injustice because poker and keno were explicitly illegal under Mississippi's gaming laws; those games could not be part of any lawful marketing promotion, contest, prize, or sweepstakes under the "safe harbor" in Miss. Code Ann. § 97-33-8(5)(b). Moore v. State, 309 So. 3d 7, 2020 Miss. App. LEXIS 391 (Miss. Ct. App. 2020), cert. denied, 309 So. 3d 451, 2021 Miss. LEXIS 8 (Miss. 2021).

CHAPTER 35.

CRIMES AGAINST PUBLIC PEACE AND SAFETY

Sec.
97-35-27. Repealed.

§ 97-35-7. Disorderly conduct; failure to comply with requests or commands of law enforcement officers; penalties; exception.

JUDICIAL DECISIONS

2. Sufficiency of evidence.

Evidence was sufficient to support defendant's conviction of disorderly conduct because both officers testified that they repeatedly asked defendant to remove his hands from his pockets and he refused each time, and they testified that defendant was irate and cursing at them with people in the surrounding area. Sims v. State, 329 So. 3d 528, 2021 Miss. App. LEXIS 197 (Miss. Ct. App.), cert. denied, 329 So. 3d 1202, 2021 Miss. LEXIS 361 (Miss. 2021).

Evidence was sufficient to support defendant's conviction of disorderly conduct because the video and the officer's testimony showed that defendant intended to breach the peace by refusing the officer's lawful orders to stand and enter the holding cell. Johnson v. State, 326 So. 3d 1019, 2021 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 299 (Miss. 2021).

§ 97-35-9. Disturbance by explosions, noises or offensive conduct.

JUDICIAL DECISIONS

1. In general.

Chancellor did not err in applying the Right to Farm Act to dismiss neighboring property owners' action seeking to enjoin farmers from using propane cannons to deter deer from eating their crops because the farmers had not been charged with violating Miss. Code Ann. § 97-35-9; the chancellor pointed out there was no evidence the farmers intended to "wilfully disturb" their neighbors, and the sole claim before the chancellor was the owners' private nuisance action. Briggs v. Hughes, 316 So. 3d 193, 2021 Miss. LEXIS 116 (Miss. 2021).

§ 97-35-27. Repealed.

Repealed by Laws, 2022, ch. 479, Repealed by Laws, 2022, ch. 479, § 7, eff July 1, 2022., eff from and after passage (approved July 1, 2022).

§ 97-35-27. [Codes, 1942, § 2563.7; Laws, 1962, ch. 325, §§ 1-5, eff from and after passage (approved June 1, 1962); repealed by Laws, 2022, ch. 479, § 7, eff from and after July 1, 2022.]

Editor's Notes — Former § 97-35-27 required convicted felons residing in the state to register within a certain time period with the chief of police of the city in which they reside, or the sheriff of the county in which they reside.

CHAPTER 37.
WEAPONS AND EXPLOSIVES

General Provisions..... 97-37-1

GENERAL PROVISIONS

Sec.

97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

§ 97-37-1. Deadly weapons; carrying while concealed; use or attempt to use; penalties; "concealed" defined.

JUDICIAL DECISIONS

3. Weapons to which statute applies.

Circuit court lacked original jurisdiction over appellant, who was a minor at the time he was alleged to have committed the offense, because, although aggravated assault was an act that attempted or committed would be a felony if committed by an adult, an automobile was not listed in the deadly weapons statute, nor could it be carried or concealed on or about one's person; thus, the case was remanded for transfer to the youth court. Altman v. State, 340 So. 3d 293, 2022 Miss. LEXIS 146 (Miss. 2022).

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

(1) It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm unless such person has received a pardon for such felony, has received a relief from disability pursuant to Section 925(c) of Title 18 of the United States Code, or has received a certificate of rehabilitation pursuant to subsection (3) of this section.

(2) Any person violating this section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Five Thousand Dollars ($5,000.00), or committed to the custody of the State Department of Corrections for not less than one (1) year nor more than ten (10) years, or both.

(3) A person who has been convicted of a felony under the laws of this state, under the laws of another state, under federal law or in state military court may apply for a certificate of rehabilitation as provided in this section. If the person was convicted of a felony under the laws of this state, he or she may apply to the court in which he was convicted for a certificate of rehabilitation. If the person was convicted of a felony under the laws of another state, under federal law or in state military court, he or she may apply to the court in the person's county of residence for a certificate of rehabilitation. A person convicted of a felony under the laws of another state, under federal law or in state military court shall attach a certified copy of his or her judgment and a certified copy of his or her completion of sentence to the petition for a certificate of rehabilitation. The court may grant such certificate in its discretion upon a showing to the satisfaction of the court that the applicant has been rehabilitated and has led a useful, productive and law-abiding life since the completion of his or her sentence and upon the finding of the court that he or she will not be likely to act in a manner dangerous to public safety.

(4)(a) A person who is discharged from court-ordered mental health treatment may petition the court which entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(i) The circumstances that led to imposition of the firearms disability under 18 USCS, Section 922(d)(4);

(ii) The person's mental history;

(iii) The person's criminal history; and

(iv) The person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(i) That the person is no longer likely to act in a manner dangerous to public safety; and

(ii) Removing the person's disability to purchase a firearm is not against the public interest.

HISTORY: Codes, 1880, § 2985; 1892, § 1026; 1906, § 1103; Hemingway's 1917, § 829; 1930, § 853; 1942, § 2079; Laws, 1898, p. 86; Laws, 1960, ch. 242, § 1; Laws, 1962, ch. 310, § 1; Laws, 1993, ch. 482, § 1; Laws, 2007, ch. 322, § 1; Laws, 2007, ch. 530, § 2; Laws, 2013, ch. 384, § 3, eff from and after July 1, 2013; Laws, 2021, ch. 430, § 4, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (3), divided the former first sentence into the first and second sentences by adding "of this state, under the laws of another state...provided in this section. If the person was convicted of a felony under the laws," in the second sentence, inserted "he or she," added the third and fourth sentences, and in the last sentence, inserted "or her" and "or she"; and in (4)(b)(i), substituted "18 USCS, Section 922(d)(4)" for "18 USC, Section 922(d)(4)."

JUDICIAL DECISIONS

Analysis

9. Sufficient evidence.
16. Multiple firearms.

9. Sufficient evidence.

Evidence at trial was sufficient to support defendant's conviction of being a felon in possession of a firearm because, although there was no physical evidence presented that defendant physically possessed the firearm, there was circumstantial evidence that he did, including that a rifle and shell casings were found in the home in which he was surrounded during a standoff. Carter v. State, 337 So. 3d 236, 2021 Miss. App. LEXIS 434 (Miss. Ct. App. 2021), cert. denied, 336 So. 3d 651, 2022 Miss. LEXIS 105 (Miss. 2022).

Sufficiency and weight of the evidence supported defendant's conviction for possession of a weapon by a felon because, on top of defendant's many admissions to possessing the charged gun, a witness gave eyewitness testimony that she saw defendant with the black and brown pistol; he pointed the pistol at her and, after sexually assaulting her, left the gun with her; in text messages between them, defendant mentioned the pistol he loaned the victim; and he made repeated pleas to get the gun back. Williams v. State, 305 So. 3d 1122, 2020 Miss. LEXIS 445 (Miss. 2020).

Evidence was sufficient to convict defendant of possession of a weapon by a convicted felon because defendant had the opportunity and motive to dispose of the weapon; the residents of the premises denied ownership of the weapon; and an additional handgun magazine was found next to defendant at the time of his arrest, and the additional handgun magazine fit the recovered pistol. Kelly v. State, 305 So. 3d 1134, 2020 Miss. LEXIS 444 (Miss. 2020).

16. Multiple firearms.

Three of defendant's four convictions for felon-in-possession of a firearm had to be vacated because the language "any firearm" included multiple firearms possessed at the same time and in the same place and the State presented evidence that defendant possessed the four weapons at the same time and in the same small house. McGlasten v. State, 328 So. 3d 101, 2021 Miss. LEXIS 307 (Miss. 2021).

§ 97-37-29. Shooting into dwelling house.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sentence proper.

1. In general.

Statute was not unconstitutionally vague because the statute had a specific mens rea requirement; due process rights were not violated; and the statute provided clear notice and sufficiently definite warning of that which was prohibited, and that which was allowed. Roberts v. State, — So. 3d —, 2021 Miss. App. LEXIS 204 (Miss. Ct. App. May 11, 2021).

2. Sentence proper.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

§ 97-37-37. Enhanced penalty for use of firearm during commission of felony.

JUDICIAL DECISIONS

ANALYSIS

2. Double jeopardy.
5. Notice.

2. Double jeopardy.

Defendant's aggravated assault conviction and firearm enhancement sentence did not violate double jeopardy because sentence enhancements did not set out separate elements of the underlying felony. Green v. State, 312 So. 3d 1214, 2021 Miss. App. LEXIS 102 (Miss. Ct. App. 2021).

5. Notice.

Defendant received sufficient notice the State of Mississippi intended to seek a firearm sentence enhancement because the indictment charged defendant with aggravated assault of an officer by shooting at him with a deadly weapon and possession of a firearm by a convicted felon. Edwards v. State, 305 So. 3d 1186, 2020 Miss. App. LEXIS 161 (Miss. Ct. App.), cert. denied, 308 So. 3d 437, 2020 Miss. LEXIS 476 (Miss. 2020), cert. denied, 308 So. 3d 438, 2020 Miss. LEXIS 475 (Miss. 2020).

CHAPTER 41.

CRUELTY TO ANIMALS

§ 97-41-19. Dog fights.

JUDICIAL DECISIONS

2. Evidence sufficient.

State presented sufficient evidence at trial to support defendant's convictions for dog fighting because an evidence technician with the county sheriff's department stated that when she arrived at defendant's property, she witnessed badly injured dogs running loose, and the items she collected were consistent with paraphernalia of dog fighting; a veterinarian

testified that the dogs all had bite wounds and lacerations that were incurred from another dog. Queen v. State, 325 So. 3d 656, 2021 Miss. LEXIS 263 (Miss. 2021).

CHAPTER 44.

MISSISSIPPI STREETGANG ACT

§ 97-44-3. Definitions.

JUDICIAL DECISIONS

1. Jury instructions.

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

§ 97-44-19. Penalties for criminal street gang activity.

JUDICIAL DECISIONS

ANALYSIS

1. Jury instructions.
3. Evidence sufficient.

1. Jury instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

3. Evidence sufficient.

Evidence supported defendant's conviction for participation in gang activity because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

CHAPTER 45.
COMPUTER CRIMES AND IDENTITY THEFT

Sec.
97-45-1. Definitions.

§ 97-45-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Access" means to program, to execute programs on, to communicate with, store data in, retrieve data from or otherwise make use of any resources, including data or programs, of a computer, computer system or computer network.

(b) "Computer" includes an electronic, magnetic, optical or other high-speed data processing device or system performing logical arithmetic and storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. "Computer" shall not include an automated typewriter or typesetter, a machine designed solely for word processing which contains no database intelligence or a portable hand-held calculator nor shall "computer" include any other device which contains components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended unless the thus controlled device is a processor of data or is a storage of intelligence in which case it too is included.

(c) "Computer network" means a set of related, remotely connected devices and communication facilities including at least one (1) computer system with the capability to transmit data through communication facilities.

(d) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(e) "Computer software" means a set of computer programs, procedures and associated documentation concerned with operation of a computer system.

(f) "Computer system" means a set of functionally related, connected or unconnected, computer equipment, devices or computer software.

(g) "Computer services" means providing access to or service or data from a computer, a computer system or a computer network and includes the actual data processing.

(h) "Credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

(i) "Loss or damage" includes any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage

assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred or other consequential damages incurred because of interruption of service.

(j) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic or other impulses.

(k) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(*l*) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder or other electronic means sent to a person identified by a unique address or address number and received by that person.

(m) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(n) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card as defined in Section 97-19-9(b), Mississippi Code of 1972, or marketable security.

(o) "Financial transaction device" means any of the following:

(i) An electronic funds transfer card.

(ii) A credit card.

(iii) A debit card.

(iv) A point-of-sale card.

(v) Any instrument, device, card, plate, code, account number, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or deposit account, or a driver's license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument, that can be used alone or in conjunction with another access device, for any of the following purposes.

1. Obtaining money, cash refund or credit account credit, goods, services or any other thing of value.

2. Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.

3. Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account or making an electronic funds transfer.

(p) "Intellectual property" includes data, computer programs, computer software, trade secrets, copyrighted materials and confidential or proprietary information in any form or medium when such is stored in, produced

by or intended for use or storage with or in a computer, a computer system or a computer network.

(q) "Internet" means that term as defined in Section 230 of Title II of the Communications Act of 1934, Chapter 652, 110 Stat. 137, 47 USCS 230.

(r) "Medical records" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(s) "Personal identity information" means any of the following information of another person:

(i) A social security number.

(ii) A driver's license number, state personal identification card number or tribal identification card number.

(iii) Employment information.

(iv) Information regarding any financial account held by another person including, but not limited to, any of the following:

1. A savings or checking account number.
2. A financial transaction device account number.
3. A stock or other security certificate or account number.
4. A personal information number for an account described in items 1 through 4.

(t) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate or otherwise communicate information, whether truthful or untruthful, about the victim.

(u) "Property" means property as defined in Section 1-3-45, Mississippi Code of 1972, and shall specifically include, but not be limited to, financial instruments, electronically stored or produced data and computer programs, whether in machine readable or human readable form.

(v) "Proper means" includes:

(i) Discovery by independent invention;

(ii) Discovery by "reverse engineering"; that is, by starting with the known product and working backward to find the method by which it was developed. The acquisition of the known product must be by lawful means;

(iii) Discovery under license or authority of the owner;

(iv) Observation of the property in public use or on public display; or

(v) Discovery in published literature.

(w) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following:

(i) Following or appearing within sight of the victim.

(ii) Approaching or confronting the victim in a public place or on private property.

(iii) Appearing at the victim's workplace or residence.

(iv) Entering onto or remaining on property owned, leased or occupied by the victim.

(v) Contacting the victim by telephone.

(vi) Sending mail or electronic communications to the victim through the use of any medium, including the Internet or a computer, computer program, computer system or computer network.

(vii) Placing an object on, or delivering or having delivered an object to, property owned, leased or occupied by the victim.

(x) "Use" means to make use of, to convert to one's service, to avail oneself of or to employ. In the context of this chapter, "use" includes to instruct, communicate with, store data in or retrieve data from, or otherwise utilize the logical arithmetic or memory functions of a computer.

(y) "Victim" means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

HISTORY: Laws, 1985, ch. 319, § 1; Laws, 2003, ch. 562, § 4, eff from and after July 1, 2003; Laws, 2021, ch. 378, § 15, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (s)(ii), added "or tribal identification card number" and made a related change.

§ 97-45-17. Posting of messages through electronic media for purpose of causing injury to any person; penalties.

JUDICIAL DECISIONS

1. Constitutionality.

Miss. Code Ann. § 97-45-17 violated the First Amendment because it was unconstitutionally overbroad. Specifically, the statute purported to criminalize any communication, whether true or untrue, that was intended to cause injury to any person, and since it did not define injury, the statute thus criminalized a substantial amount of protected speech, such as core political speech, speech about public figures, and offensive parodies. Edwards v. State, 294 So. 3d 671, 2020 Miss. App. LEXIS 117 (Miss. Ct. App. 2020).

CHAPTER 47.

MISSISSIPPI UNMANNED AIRCRAFT SYSTEMS PROTECTION ACT OF 2021

Sec.

97-47-1. Short title.
97-47-3. Definitions.
97-47-5. Offense of unlawful use of an unmanned aircraft system.
97-47-7. Operation of unmanned aircraft system by law enforcement agency for lawful purpose permitted; operation of unmanned aircraft system by public agency or public contractor permitted under certain circumstances; applicability of chapter.
97-47-9. Penalties.

§ 97-47-1. Short title.

This chapter shall be known and referred to as the "Mississippi Unmanned Aircraft Systems Protection Act of 2021."

HISTORY: Laws, 2021, ch. 403, § 15, eff from and after July 1, 2021.

§ 97-47-3. Definitions.

For the purposes of this chapter, unless otherwise specified, the following terms shall have the following meanings:

(a) "Correctional facility" means any:

(i) Confinement facility operated or contracted by the Mississippi Department of Corrections;

(ii) Confinement facility operated or contracted by the Federal Department of Prisons;

(iii) Municipality or county jail;

(iv) Confinement facility operated or contracted by the Federal Department of Prisons; or

(v) Public or private youth detention facility.

(b) "Critical infrastructure" means any of the following, whether public or private:

(i) Petroleum refinery or petroleum tank farm;

(ii) Electrical power generation facility which supports the Mississippi power grid system;

(iii) Natural gas processing and terminal facility;

(iv) Military installation owned by the federal or state government; or

(v) Entity contracted by the Department of Defense or State Military Department to produce defense products.

(c) "Unmanned aircraft" means an aircraft that is constructed or operated without the possibility of direct human intervention from within or on the aircraft, including every object that is on board or otherwise attached to the aircraft, or carried or operated during flight, regardless of weight. For purposes of this chapter, this term is synonymous with the term "drone."

(d) "Unmanned aircraft system" means an unmanned aircraft and all associated elements, including, but not limited to, communication links, sensing devices, and components that control the unmanned aircraft.

HISTORY: Laws, 2021, ch. 403, § 16, eff from and after July 1, 2021.

§ 97-47-5. Offense of unlawful use of an unmanned aircraft system.

A person commits the offense of unlawful use of an unmanned aircraft system if he or she knowingly:

(a) Uses an unmanned aircraft system to conduct surveillance of, collect information or data, or photographically or electronically record a critical infrastructure or correctional facility without the prior written consent of

the owner, or the owner's designee, of the critical infrastructure or correctional facility; or

(b) Delivers or attempts to deliver contraband using an unmanned aircraft system on a correctional facility property or adjacent property for the purpose of introducing contraband into a correctional facility.

HISTORY: Laws, 2021, ch. 403, § 17, eff from and after July 1, 2021.

§ 97-47-7. Operation of unmanned aircraft system by law enforcement agency for lawful purpose permitted; operation of unmanned aircraft system by public agency or public contractor permitted under certain circumstances; applicability of chapter.

(1) Nothing in this chapter shall be deemed to prohibit the operation of an unmanned aircraft system by a law enforcement agency for any lawful purpose in this state.

(2) A public agency or a public contractor, other than a law enforcement agency or contractor, may operate an unmanned aircraft system only if the public agency or contracted entity operates the unmanned aircraft system:

(a) With the written consent of the owner, or the owner's designee, of the critical infrastructure or correctional facility; and

(b) In accordance with the rules and regulations adopted by the Federal Aviation Administration.

(3) This chapter shall not pertain to unmanned aircraft operating under Federal Aviation Administration Certificates of Waiver Authorization.

HISTORY: Laws, 2021, ch. 403, § 18, eff from and after July 1, 2021.

§ 97-47-9. Penalties.

(1) Any person who is convicted under Section 97-47-5(a) shall be guilty of a misdemeanor, punishable up to one (1) year in prison or a fine not to exceed One Thousand Dollars ($1,000.00) for the first offense or both.

(2) Any person convicted under Section 97-47-5(b) shall be guilty of a felony, punishable by a term of no less than three (3) years and no more than fifteen (15) years in the State Penitentiary or a fine not to exceed Twenty-five Thousand Dollars ($25,000.00), or both.

HISTORY: Laws, 2021, ch. 403, § 19, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.